

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Luis Villegas,

Plaintiff,

v.

Food 4 Less Of California, Inc., a
California Corporation; and Does 1-
10,

Defendants

CV 13-8099
Case No. *ODW (CWx)*

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence

Demand For Jury

Plaintiff Luis Villegas complains of Defendants Food 4 Less Of California, Inc., a California Corporation; and Does 1-10, ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who uses a wheelchair for mobility.

2. Defendants Food 4 Less Of California, Inc. were the owners and operators of Food 4 Less stores located at or about 6901 Eastern Avenue, Bell

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CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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1 Gardens, California (on October 19, 2012), and 3654 East Olympic Blvd.,
2 Los Angeles, California (December 22, 2012), respectively.

3 3. Food 4 Less Of California, Inc. is currently the owner and operator of
4 these two stores.

5 4. Plaintiff does not know the true names of Defendants, their business
6 capacities, their ownership connection to the property and business, or their
7 relative responsibilities in causing the access violations herein complained of,
8 and alleges a joint venture and common enterprise by all such Defendants.
9 Plaintiff is informed and believes that each of the Defendants herein,
10 including Does 1 through 10, inclusive, is responsible in some capacity for
11 the events herein alleged, or is a necessary party for obtaining appropriate
12 relief. Plaintiff will seek leave to amend when the true names, capacities,
13 connections, and responsibilities of the Defendants and Does 1 through 10,
14 inclusive, are ascertained.

15
16 **JURISDICTION & VENUE:**

17 5. This Court has subject matter jurisdiction over this action pursuant to
18 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
19 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

20 6. Pursuant to pendant jurisdiction, an attendant and related cause of
21 action, arising from the same nucleus of operative facts and arising out of the
22 same transactions, is also brought under California's Unruh Civil Rights Act,
23 and the California Disabled Persons Act, which acts expressly incorporate the
24 Americans with Disabilities Act.

25 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.

1 **FACTUAL ALLEGATIONS:**

2 8. The Plaintiff went to the Food 4 Less located at 3654 East Olympic
3 Blvd., Los Angeles, California, on or about December 22, 2012, and went to
4 the Food 4 Less located at 6901 Eastern Avenue, Bell Gardens, California, on
5 October 19, 2012, to shop.

6 9. The stores are facilities open to the public, places of public
7 accommodation, and business establishments.

8 10. Ticket dispensers in the meat department are one of the facilities,
9 privileges and advantages offered by defendants to their customers at the
10 stores.

11 11. Unfortunately, there were no handicap-accessible ticket dispensers in
12 the meat section because they were located too high for plaintiff to use.

13 12. The plaintiff personally encountered this problem. These inaccessible
14 conditions denied the plaintiff full and equal access and caused him
15 difficulty.

16 13. Additionally, on information and believe, the plaintiff alleges that the
17 failure to remove these barriers was intentional because: (1) these particular
18 barriers are intuitive and obvious; (2) the defendants exercised control and
19 dominion over the conditions at this location and, therefore, the lack of
20 accessible facilities was not an "accident" because had the defendants
21 intended any other configuration, they had the means and ability to make the
22 change.

23
24 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
25 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all
26 defendants (42 U.S.C. section 12101, et seq.)

27 14. Plaintiffs replead and incorporate by reference, as if fully set forth
28 again herein, the allegations contained in all prior paragraphs of this

1 complaint.

2 15. Under the ADA, it is an act of discrimination to fail to ensure that the
3 privileges, advantages, accommodations, facilities, goods and services of any
4 place of public accommodation is offered on a full and equal basis by anyone
5 who owns, leases, or operates a place of public accommodation. See 42
6 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 7 a. A failure to make reasonable modifications in policies, practices,
8 or procedures, when such modifications are necessary to afford
9 goods, services, facilities, privileges, advantages, or
10 accommodations to individuals with disabilities, unless the
11 accommodation would work a fundamental alteration of those
12 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 13 b. A failure to remove architectural barriers where such removal is
14 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
15 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
16 Appendix "D."
- 17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs or to ensure that, to
21 the maximum extent feasible, the path of travel to the altered
22 area and the bathrooms, telephones, and drinking fountains
23 serving the altered area, are readily accessible to and usable by
24 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

25 16. Under the Americans with Disabilities Act, any person who owns,
26 leases, leases to or operates a place of public accommodation must ensure
27 that that the facilities are made available in a full and equal manner and in a
28 way that does not discriminate. (42 U.S.C. § 12182(a).)

1 17. One manner of discrimination is to either build facilities that do not
2 comply with the code or to fail to modify facilities, *i.e.*, remove barriers, to
3 bring them into compliance with the access standards. (42 U.S.C. §
4 12182(b)(2)(A)(iv).)

5 18. Pursuant to ADAAG section 4.34.3, the maximum reach heights can
6 be no more than 54 inches above the finished floor or grade.

7 19. Here, defendants and have placed their ticket dispensers in the meat
8 department at the 6901 Eastern location as high as 58 inches. At the 3654
9 Olympic location, the ticket dispenser was 60 inches in height.

10 20. The Defendants are persons who own, operate, lease or lease to a place
11 of public accommodation. As such, the Defendants are required to ensure
12 that persons with disabilities are not discriminated against and, additionally,
13 have specific duties to (1) ensure that all construction, alteration, or
14 modification is barrier free and complies with the Americans with Disabilities
15 Act Accessibility Guidelines (“ADAAG”); and/or (2) remove all existing
16 barriers where such removal is “readily achievable,” and/or (3) to provide
17 alternatives to barrier removal. The Defendants have failed to meet these
18 obligations.

19
20 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
21 **RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ §
22 51-53)

23 21. Plaintiff repleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint.

26 22. Because the defendants violated the plaintiff’s rights under the ADA,
27 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
28 Code § 51(f), 52(a).)

1 23. Because the violation of the Unruh Civil Rights Act resulted in
 2 difficulty, discomfort or embarrassment for the plaintiff, the defendants are
 3 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
 4 55.56(a)-(c).)

5
 6 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
 7 **DISABLED PERSONS ACT** (On behalf of plaintiff and against all
 8 defendants) (Cal Civ. § 54-54.8)

9 24. Plaintiff repleads and incorporates by reference, as if fully set forth
 10 again herein, the allegations contained in all prior paragraphs of this
 11 complaint.

12 25. Because the defendants violated the plaintiff's rights under the ADA,
 13 they also violated the Disabled Persons Act and are liable for damages. (Civ.
 14 Code § 54.1(d), 54.3(a).)

15 26. Because the violation of the DPA resulted in difficulty, discomfort or
 16 embarrassment for the plaintiff, the defendants are also each responsible for
 17 statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

18
 19 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
 20 and against all defendants)

21 27. Plaintiff repleads and incorporates by reference, as if fully set forth
 22 again herein, the allegations contained in all prior paragraphs of this
 23 complaint.

24 28. The Defendants had a general duty and a duty arising under the
 25 Americans with Disabilities Act and the Unruh Civil Rights Act and
 26 California Disabled Persons Act to provide safe, convenient, and accessible
 27 facilities to the plaintiff. Their breach of this duty, as alleged in the preceding
 28 paragraphs, has caused injury and damage as alleged above.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 Plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act and/or the California
9 Disabled Persons Act which damages provide for actual damages and a
10 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
11 acts, simultaneously, and an election will be made prior to or at trial.

12 3. Reasonable attorney fees, litigation expenses and costs of suit,
13 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ.
14 Proc. § 1021.5.

15
16 Dated: October 4, 2013

CENTER FOR DISABILITY ACCESS

/s/ Raymond G. Ballister

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18 By: _____
19 Raymond G. Ballister, Jr, Esq.
20 Attorneys for Plaintiff
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